

## Internal Revenue Service

Number: **201151009**  
Release Date: 12/23/2011  
Index Number: 1362.01-03

Department of the Treasury  
Washington, DC 20224

Third Party Communication: None  
Date of Communication: Not Applicable

Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:PSI:02  
PLR-116774-11

Date:  
August 19, 2011

### Legend

X =

A =

State =

Date =

Dear :

This letter responds to your letter dated January 19, 2011 and subsequent correspondence, submitted on behalf of X, requesting relief under § 1362(b)(5) of the Internal Revenue Code.

### FACTS

The information submitted states that X incorporated on Date under the laws of State. X's sole shareholder, A, intended X to be an S corporation effective Date 1; however, Form 2553, Election by a Small Business Corporation, was not timely filed. X requests a ruling that it will be recognized as an S corporation effective Date.

### LAW AND ANALYSIS

Section 1362(a)(1) provides that a small business corporation may elect to be an S corporation.

Section 1362(b)(1) provides that an S election will be effective for the taxable year if a small business corporation makes the election during the preceding taxable year or within the first two and one-half months of the corporation's taxable year. Section 1362(b)(3) provides that an S election made after the first two and one-half months of the corporation's taxable year will be treated as made for the following taxable year.

Section 1362(b)(5) authorizes the Secretary to treat an election as timely made if: (A) an election under § 1362(a) is made for any taxable year after the date prescribed by § 1362(b) for making such election for such taxable year or no such election is made for any taxable year, and (B) the Secretary determines that there was reasonable cause for the failure to timely make such election.

### CONCLUSION

Based solely on the facts submitted and the representations made, we conclude that X has established reasonable cause for failing to make a timely election to be an S corporation effective Date. Accordingly, if X makes an election to be an S corporation by filing a complete Form 2553 with the appropriate service center effective Date within 120 days from the date of this letter, then such election will be treated as timely made. A copy of this letter should be attached to the Form 2553 filed with the service center and is enclosed for that purpose.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of the facts described above under any other provision of the Code, including whether X was or is a small business corporation under § 1361(b) of the Code.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to X's authorized representative.

Sincerely,

Melissa C. Liquerman  
Branch Chief, Branch 2  
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter

Copy for § 6110 purposes